PUBLIC PROSECUTOR

v.

HAU CHOONG LAI

HIGH COURT MALAYA, SEREMBAN
PEH SWEE CHIN J
[CRIMINAL TRIAL NO. 3 OF 1982]
26 JUNE 1985

CRIMINAL LAW AND PROCEDURE: *Accused charged with attacking deceased in an extremely cruel, brutal and savage manner - Defence of provocation - Whether out of proportion - Plea of guilty - Other extenuating circumstances - Public interest in punishing offender and deterring potential offenders.*

The accused was charged for causing the death of the deceased by an attack which was extremely cruel, brutal and savage. His defence was that he had attacked the deceased out of provocation which arose as a result of a quarrel or fight between him and the deceased. In mitigation the Court was urged to take into consideration *inter alia* the plea of guilty entered by the accused and also the fact that a long sentence of imprisonment would cause suffering to the accused's wife and family.

Held:

[1] The savagery and brutality of the attack on the deceased was totally out of proportion to the provocation arising out of a quarrel or fight between the accused and the deceased.

[2] The plea of guilty in the circumstances of this case would not merit a great deal in mitigating the sentence to be imposed because it was less in the nature of a concession than from the defence to the prosecution than the other way round.

[3] Bearing in mind the circumstances of this case, public interest, in that sense of punishing offender and deterring like-minded potential offenders, demanded that a heavy sentence of imprisonment be imposed to show that the Court abhorred physical violence.

[Accused sentenced to 10 years' imprisonment.]

For the public prosecutor - Mohd. Zaki bin Md. Yasin; DPP
For the accused - Manjeet Singh Dhillon; M/s. Lawrence, Dhillon & Associates

JUDGMENT

Peh Swee Chin J:

The accused herein appeals against the sentence of ten years' imprisonment which this Court imposed on him.

The most significant factor was that the attack on the deceased in question by the accused was extremely cruel, brutal and savage. There were altogether 24 injuries inflicted on the deceased, who died of them in his prime. Among the injuries, were 5 stab wounds, 3 of which on such vital parts of the body as the head or face, 2 were just beneath the collar bone, both left and right. There were 7 lacerated wounds above the face again and multiple abrasions. Photographs revealed an appalling and revolting sight of the deceased whose badly smashed face could conceivably be beyond the recognition of even his dear ones. There were comminuted fractures of the skull.

The accused was not injured except for some swelling on the back of his hand, other scratches found on him appeared to be connected with his dandruff.

The savagery and brutality of the attack on the deceased was totally out of proportion to the provocation arising out of a quarrel or fight said by the accused to have taken place between accused and the deceased. Further it would quite jar with common sense to accept the accused's word about a fight between him and the deceased, by looking at such severe injuries of the deceased and the fact that the accused had come off it completely unscathed except for that innocuous swelling on his hand.

Again, the accused did not make a clean breast of things after killing the deceased by reporting to the police immediately or as soon as possible. The offence was committed between 4 a.m. and 6 a.m. on 16 June 1982 and he had to be arrested at 12.45 p.m. on 17 June 1982 by the police, and without the prompt and commendably efficient investigation by the police, the accused could have been still at large albeit his professed intention to tell it all to his employer, having regard to the fact that nobody had seen them leave their home-town together. Those who could have seen them together elsewhere could probably not remember them, i.e. fellow-gamblers in the Genting casino, and those fellow-customers in that coffee shop on the way home. They were strangers to the deceased and the accused and either they were absorbed in their own gambling or there was nothing unusual about them to make people look twice at them. His sister and nephew who had seen his blood-stained clothes, would have, by virtue of their blood relationship, entered into a conspiracy of silence for the accused's benefit without requiring much persuasion from the accused.

The plea of guilty of the accused, would in the circumstances of this case have merited, not a great deal, in the matter of mitigation of sentence because it was less in the nature of a concession than from the defence to the prosecution than the other way round, because the prosecution had no intention to reduce the charge and was keen to proceed with it on an earlier date when it was however adjourned by the Court because one of the prosecution witnesses, an investigating officer was away in England reading for the Bar, and would not be available for some time. The Court thought it inadvisable to have long recess in a trial by jury. If I remember correctly, at one stage, on being asked by me, the learned Deputy then stated that the charge would not be reduced though the defence appeared to be quite keen to such amendment of charge.

On the other hand, the Court considered nonetheless the plea of guilty, subject to what has been stated earlier, entered by the accused, and also about the accused being a married man so that a long sentence of imprisonment could cause suffering to his wife and family who were innocent. He had co-operated with the police. There was a quarrel between friends.

In all the circumstances of this case, public interest, in that sense of punishing offender and deterring like-minded potential offenders weighed down heavily the scale and demanded that a heavy sentence of imprisonment was called for, to show that the Court abhorred physical violence, and most so, when the physical violence was of the worst type as found in this case.

Also found at [1985] 2 CLJ 257